

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 56218 through CA MC 56222.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: James K. Daily, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James K. Daily has appealed the California State Office, Bureau of Land Management (BLM), decision of June 8, 1981, which declared the unpatented Stellar Iron Nos. 1 through 5 lode mining claims, CA MC 56218 through CA MC 56222, abandoned and void for failure to file on or before December 30, 1980, evidence of assessment work or a notice of intention to hold as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

With his notice of appeal, appellant submitted copies of proof of annual labor for the assessment years ending September 1, 1979, and

September 1, 1980, as recorded in the records of Riverside County, California.

Examination of the case file discloses that Stellar Iron No. 1 was located September 5, 1961, and Stellar Iron Nos. 2, 3, 4, and 5, were located October 1, 1968. Section 314 of FLPMA, supra, requires the owner of an unpatented mining claim located before October 21, 1976, to file for record in the proper BLM office on or before October 22, 1979, a copy of the official record of location notice and of affidavit of assessment work performed thereon. File for record in the proper BLM office means to be received and date stamped. 43 CFR 3833.1-2(a).

The copies of the location notices in this case reflect that the location notice for Stellar Iron No. 1 was filed with BLM October 22, 1979, but the notices for Stellar Iron Nos. 2, 3, 4, and 5, were not filed with BLM until August 25, 1980. Payment of a service charge of \$5 for each claim is required by 43 CFR 3833.1-2(d). Appellant apparently paid \$10 when he filed the location notice for Stellar Iron No. 1, and the affidavit of labor, which named all five claims.

A notice of location will not be accepted by BLM if it is not accompanied by the \$5 service fee. Phyllis Wood, 46 IBLA 309 (1980). Recordation is effected by filing a copy of the location notice with the proper BLM office and paying the required service fee. G. W. Monk, Jr., 47 IBLA 213 (1980). The owner of a mining claim located before October 21, 1976, must file a copy of the location notice and pay the \$5 service charge to the proper BLM office on or before October 22, 1979. Carl A. Borgstrom, 47 IBLA 232 (1980). When the service fee is not paid within the prescribed time limit, the claim must be deemed to be abandoned and void. David Mendenhall, 47 IBLA 298 (1980); Virginia Edwards, 47 IBLA 301 (1980).

There was no proper recordation under FLPMA of the Stellar Iron Nos. 2, 3, 4, or 5 claims as the location notices were not filed with BLM on or before October 22, 1979. The claims had been located in 1968. Pursuant to FLPMA, 43 U.S.C. § 1744(c) (1976), these four claims should have been deemed conclusively abandoned and void. It was error for BLM to accept for recordation in August 1980 the location notices of claims located in 1968. See Steven V. Miskoff, 58 IBLA 32 (1981).

Section 314 of FLPMA, supra, also requires the owner of unpatented mining claims to file evidence of assessment work or notice of intention to hold the claims on or before December 30 of each year or the claims will be deemed conclusively to be abandoned and void. Grant Kirkham, 58 IBLA 131 (1981). As the required instruments for calendar year 1980 were not filed with BLM for any of the claims on or before December 30, 1980, BLM properly deemed the Stellar Iron No. 1 claim abandoned and void. Susan Mativo, 52 IBLA 134 (1980). This Board has

no authority to waive failure to comply with statutory requirements or to afford relief from the statutory consequences. Lynn Keith, 52 IBLA 192, 88 I.D. 369 (1981).

Appellant should consult with BLM about the possibility of relocating his claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

